Indo-U.S. Relations: Effect of Patent Laws

By MANUKA KHANNA

Relations between the two great democracies—India and the United States—date to the time when India had not yet gained independence. Over the passage of time, these relations have been conditioned by various factors, which resulted in cooperation as well as conflict. Occasionally, some rifts were bridged and paved the way for stronger ties, whereas some perpetual irritants continued to mar relations. In current times too, the relations are influenced by several interrelated factors, of which one of significance is the Indian patent policy. It was a major irritant in Indo-U.S. relations in the 1980s, but has now become one of the major resources for strengthening relations.

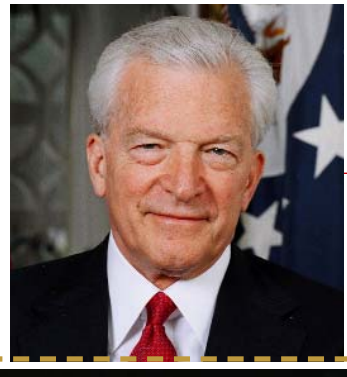
Indian patent laws date to 1856 and have been modified over time. After independence, the suggestions of the Patent Inquiry Committee (1948-50) and the Ayyangar Committee (1957-59) were incorporated in the Indian Patent Act (1970), to encourage innovation by protecting proprietary research and development. This philosophy was unable to meet the Indian requirement of encouraging access to foreign technologies, which was difficult due to high costs. In order to reconcile this, patents were issued for methods of producing products, but not for the products themselves. This permitted the commercialization of a drug that was a proprietary product of another as long as it was produced in a different method.

This approach varied greatly from the policy of the developed countries, especially the United States. The Indian government did not accept the idea of "product patent protection" because of pressure from companies duplicating Western-

2004-to present

Ambassador to the United States

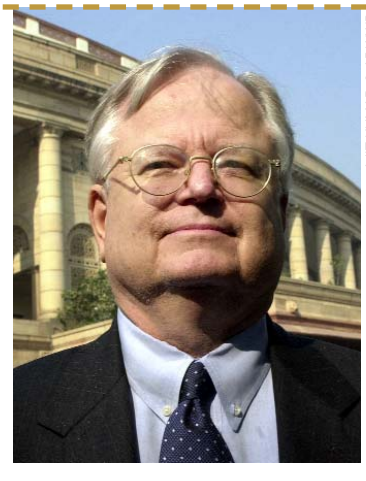
Ronen Sen



2004-to present

Ambassador to India

David C. Mulford



JOHN WICART/U.S. DEPARTMENT OF STATE

2001-2003

Ambassador to India

Robert D. Blackwill

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2006

President George W. Bush with Prime Minister Manmohan Singh on his arrival in New Delhi. Prime Minister Singh had visited Washington in July 2005.

manufactured drugs. The Indian policy also met with U.S. criticism with regard to the patent term, which was far shorter than the 20 years mandated by the World Trade Organization. The term for an Indian patent for chemicals, food, medicines and drugs was seven years from the date of filing the application or five years from the date of sealing, whichever was shorter. In the case of other products, the patent term was 14 years from the date of filing the complete specification. The Patent Act also made provision for the use of patented inventions by the government to ensure that there is no scarcity of patented articles and their prices do not go up. This law did not allow the patenting of atomic energy and living organisms. Thus, the Indian law came into conflict with the American law, which allowed wider patenting.

The 1980s witnessed enhanced Indo-U.S. cooperation in science and technology. A significant step was the Science and Technology Initiative in 1982 and its renewal in 1985 for another three years. There were successful joint ventures in the fields of health, agriculture, biomass, solid-state sciences, electronics, computers, precision instrumentation and software development. This cooperation, however, was threatened by the U.S. insistence on changes in Indian patent laws. The United States specifically wanted India to introduce product patents in all categories and extend their duration. India, however, opposed these alterations as they would come in the way of new research findings and perpetuate monopolies.

Though the Science and Technology Initiative was renewed after India accepted the inclusion of Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the 1986-94 Uruguay Round of world trade talks, the patent issue remained unresolved. In 1989, the United States named India among the eight countries that were on a "priority watch-list" for violation of American intellectual property rights.

At the Uruguay talks, India emphasized the need for more favorable treatment for developing nations in the area of patents and trademarks. It also proposed that they should be given the freedom to adapt their domestic legislation to their economic development and the needs of their people. The Indian government attempted to bring certain changes through the Patent Amendment Act of 1994-95. It failed due to the opposition of the domestic industry and no alterations were made until 1998.

There were several changes in the 1990s, in the post Cold War scenario, when national interests were associated with greater economic participation at the international level. The government was supported in its efforts to promote change by industrial bodies like the Confederation of Indian Industry, Associated Chambers of Commerce and Industry of India, Federation of Indian Chambers of Commerce and Industry and the Council of Scientific and Industrial Research. In May 2002, India fulfilled part of its commitment to the international community by extending the pharmaceutical patent protection from seven to 20 years and enacted the TRIPS-compliant Trademarks Act, Copyright Act and Designs Registration Act.

The main roadblock in the path of better relations with the United States was removed with the ratification of the Patent (Amendment) Act, 2005, by the Indian Parliament in April 2005. The Act was significant due to the introduction of the product patent regime. It changed several aspects of intellectual property with special impact on the biotechnology and pharmaceutical industries. It granted a 20-year term from the filing date of applications including for "mailbox applications" (which had been filed since 1995).

The positive effect of the Act was witnessed during the visit of President George W. Bush to India in March 2006. India is now seen as a lucrative market and investment center. The two countries began cooperation in the field of space, health and defense. Hopes were raised for enhanced strategic cooperation and expansion in commerce.

The Act has brought several welcome changes. Yet its Section 3(d) has raised a controversy because it does not recognize that new uses of known substances can be patented, on the grounds that they do not fulfill the "inventive step" requirement. The patenting of traditional knowledge is also an issue of contention and often misunderstandings between developed and developing countries. The recent hubbub over false reports that yoga practices had been patented in the United States is one such example. Some other issues like the creation and management of legal and other infrastructure, labor law reforms and slow decision-making processes still cast a shadow on the relations. The two nations have traveled a long way since the 1980s and there are hopes that this upward trend will continue.

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